

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

GRISELDA McGEHEE, et. al.)	
)	
v.)	NO. 3:15-0530
)	
WELLS FARGO BANK, N.A.)	

TO: Honorable William J. Haynes, Jr., Senior District Judge

REPORT AND RECOMENDATION

This action was commenced by the filing of a complaint on May 6, 2015 (Docket Entry No. 1). By Order entered August 13, 2015, (Docket Entry No. 14), Plaintiffs were directed to file a report of the status of service of the summons and complaint on Defendant Deborah Miller, with a filing deadline of October 5, 2015. No status report was filed. By order entered on December 10, 2015 (Docket Entry No. 27), Plaintiffs were given notice, pursuant to Fed.R.Civ.P. 4(m), that if service on Defendant Deborah Miller was not perfected and an executed return of service filed by January 15, 2016, a recommendation would be made to the District Judge that Plaintiffs' claims against Defendant Deborah Miller be dismissed. No return of service was filed.

Rule 4(m) of the Federal Rules of Civil Procedure allows for 90 days within which to serve a defendant, and, if not served within that time, "the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant". Fed.R.Civ.P. 4(m).¹

¹Rule 4(m) was amended effective December 15, 2015, to reduce the time allowed for service of process from 120 days to 90 days. Under either version of the rule, the time for service on Defendant Deborah Miller has long since expired.

The Court gave the requisite notice to Plaintiffs that their claims against Defendant Deborah Miller would be dismissed. *See* Docket Entry No. 27. Additionally, it is well-settled that federal trial courts have the inherent power to manage their own dockets. *Link v. Wabash R.R.*, 370 U.S. 626, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1961). Plaintiffs' claims against Defendant Deborah Miller should therefore be dismissed without prejudice based on Plaintiffs' failure to timely perfect service.


RECOMMENDATION

Based on the foregoing, the Court respectfully RECOMMENDS that Plaintiffs' claims against Deborah Miller be DISMISSED WITHOUT PREJUDICE.

ANY OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of service of the Report and Recommendation upon the party and must state with particularity the specific portions of this Report and Recommendation to which objection is made. Failure to file written objections within the specified time can be deemed a waiver of the right to appeal the District Court's Order regarding the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

The Clerk is directed to mail a copy of this Report and Recommendation to Defendant Deborah Miller at 613 Hillsboro Road, #B21, Franklin, TN, 37064, by first-class mail (only).

Respectfully submitted,


BARBARA D. HOLMES
United States Magistrate Judge